

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

ALL ACTIONS

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

PLAINTIFFS' RESPONSE TO THE "FAIR ALLOCATION" OF TIME MOTION

Defendants seek too much. They have examined Plaintiffs' experts almost twice the extent of Plaintiffs' examination of defense's experts and now seek to preclude either live or oral testimony under the guise of a "fair allocation."

Dr. Rosenthal submitted her rebuttal on the date the Court directed. Defendants have had sufficient time to respond and thus there is no basis as to Dr. Rosenthal for this motion.

As to Dr. Hartman, the delay is caused by Plaintiffs being forced to respond to the surprise SheetMetal chart sprung on us during the second to last day of trial.

Defendants should not complain about delay they caused. They had the SheetMetal data for a year and should have disclosed this argument when their expert reports were due.

Further, the Court will want to examine the written testimony and not forego it, as defendants suggest. It contains, among other items, charts showing that after the MMA total costs (drugs plus services) for each of the days at issue has decreased, thus undercutting defendants' no causation argument.

As to the length of the rebuttals, defendants' written expert reports covered numerous issues that could not be covered on examination in the time allocated. Plaintiffs did not complain. Now, what is sauce for the goose is sauce for the gander.

Plaintiffs suggest that the Court should proceed as planned, equal time to each side.

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO THE "FAIR ALLOCATION" OF TIME MOTION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on December 15, 2006, a copy to LexisNexis File & Serve for posting and notification to all parties.

By /s/ Steve W. Berman

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